

EXHIBIT 7

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

PRICE LITIGATION : 01-CV-12257-PBS

THIS DOCUMENT RELATES TO :

U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris

the Florida Keys, Inc. :

v. :

Abbott Laboratories, Inc., : Chief Magistrate

No. 06-CV-11337-PBS : Judge Marianne B.

- - - - -x Bowler

(CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

Videotaped deposition of DR. THOMAS A. GUSTAFSON

Volume II

Washington, D.C.

Monday, December 17, 2007

9:19 a.m.

<p style="text-align: right;">Page 453</p> <p>1 the Division of Medicaid and Long-term Care, and 2 thereafter when you had work affiliated with Medicaid 3 responsibilities, were you aware that states were 4 required to submit what we'll call state health 5 plans? 6 A. Oh, yes. 7 Q. You knew that? 8 A. I mean, state health plans -- I mean, the 9 state plans were famous. Huge documents with many, 10 many, many, many, many amendments. Yea big, that 11 sort of thing. There was always a question about who 12 exactly knew what was in the state plans, because 13 they had been amended so many times, it wasn't clear 14 you could actually sort of peer through to find out 15 what the true, true plan was. 16 Q. But you knew that at that time, while you 17 were working in the late '80s on Medicare related 18 issues, you knew that the state health plans -- in 19 those state health plans, states were required to 20 specify the methodology upon which they would be 21 paying for prescription drugs under the Medicaid 22 program?</p>	<p style="text-align: right;">Page 455</p> <p>1 Q. And did you know during the time that you 2 were working on Medicaid issues in the late '80s that 3 HCFA, in fact, would disapprove of state plans that 4 did not have a significant discount off AWP in their 5 payment for prescription drugs? 6 MR. AZORSKY: Objection. Form. 7 THE WITNESS: I don't recall this in 8 particular specifics. Understanding that my job was 9 sort of leading out of the agency toward Congress, 10 and actually paid very little attention to exactly 11 what was going on in terms of the interaction with 12 the individual states, except insofar as some problem 13 blew up. 14 BY MR. GORTNER: 15 Q. You're not sure one way or the other 16 whether you knew that information? 17 A. That's correct. Yes. 18 Q. How about when you began as director of 19 HAP in 1998. Were you aware at that time that HCFA 20 had disapproved state plans that did not discount off 21 AWP? 22 A. I don't -- I don't recall much discussion</p>
<p style="text-align: right;">Page 454</p> <p>1 A. I'd have to say I believe so. I mean, the 2 state plans would have covered the detail about how 3 the state plans were operated. The area in which the 4 states had the greatest degree of freedom was in the 5 payment area, as distinct from eligibility in which 6 they had very little freedom. Coverage, in which 7 they had, if you will, medium degrees of freedom. 8 But they had the most discretion in the payment area. 9 So I know they had to report changes in 10 their payment procedures. I'm just not entirely 11 familiar with exactly what level of detail they were 12 required to report on benefits such as prescription 13 drugs. 14 Q. If you look at the next sentence of that 15 third to the bottom paragraph, it reads, the 16 manual -- referring to the state Medicaid manual -- 17 issuance further provided that absent valid 18 documentation to the contrary, it would not be 19 acceptable for a state to make reimbursements using 20 AWP without a significant discount. Do you see that 21 sentence? 22 A. I do.</p>	<p style="text-align: right;">Page 456</p> <p>1 of it. The Medicaid folks were aware and talked to 2 -- the Medicaid drug folks, like Bob Niemann, talked 3 with the folks in the Medicaid, what is now the 4 Center for Medicaid and State Operations. So I know 5 they were in touch with each other, comparing notes 6 and so forth. But I don't recall them bringing, Bob 7 or others bringing much to my attention about what 8 Medicaid was doing. 9 Q. Well, how about in terms of, did you rely 10 upon Bob Niemann, for instance, to educate you about 11 AWP issues that he may have learned through his 12 involvement with the Medicaid program? 13 A. Well, I can say that Bob was probably 14 my -- the single largest source of information about 15 AWP. Where he got his information from, how much 16 attention he paid to Medicaid, I don't recall. I 17 didn't know. 18 Q. Would the fact that HCFA had issued a 19 revision to the state Medicaid manual providing that 20 absent valid documentation of the contrary, it would 21 not be acceptable for a state to make reimbursements 22 using undiscounted AWP, would that information be</p>